

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10

MH HOSPITAL MANAGER, LLC	)	
	)	
Employer,	)	
	)	
and	)	
	)	Case 10-RC-257615
NATIONAL NURSES ORGANIZING	)	
COMMITTEE/NATIONAL NURSES	)	
UNITED, (NNOC/NNU),	)	
	)	
Petitioner.	)	
	)	
	)	

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**MOTION FOR RECONSIDERATION**

Petitioner National Nurses Organizing Committee (“NNOC” or the “Union”) respectfully requests that the Regional Director reconsider his decision to deny the Union’s request that Respondent MH Hospital Manager, LLC (“Respondent” or the “Employer”) make offers of proof before it proceeds further in hearing consistent with GC Memo 15-06 and Section 102.66(c) of the NLRB Rules and Regulations.

The Union petitioned for a unit of Registered Nurses employed by the Employer at its facilities located at 509 Biltmore Ave., Asheville, NC 28801 and 428 Biltmore Ave., Asheville, NC 28801, excluding all other employees, guards, supervisors and other professional employees as defined by the Act.

Through its statement of position, the Employer argues, in part, that the petitioned-for unit is inappropriate because it does not include employees of a separate entity, MH Community Multispecialty Providers, LLC (“MHCMP”), under a single-employer theory, and does not include employees of various outlying clinics. The Region should reconsider its decision and order the Employer to provide offers of proof as to these matters to avoid unnecessary delay in the

representation proceedings.

“Conducting representation elections is core to the NLRB’s mission.” NLRB Resumes Representation Elections, Press Release, *available at* <https://www.nlr.gov/news-outreach/news-story/nlr-resumes-representation-elections> (Apr. 1, 2020). To that end, that NLRB’s representation procedures are designed to eliminate duplicative and unnecessary litigation and “enable the Board to better fulfill its duty to protect employees’ rights by fairly, efficiently, and **expeditiously** resolving questions of representation.” GC Memo 15-06 (Apr. 6, 2015) (emphasis added). Requiring the Employer to provide an offer of proof as to the complex issues it raised will eliminate unnecessary litigation and delay.

Nothing in the NLRB Regulations prohibit the Hearing Officer from demanding an offer of proof after the Hearing has begun. NLRB Regulation 102.66(c) states,

(c) Offers of proof. The Regional Director shall direct the Hearing Officer concerning the issues to be litigated at the hearing. The Hearing Officer may solicit offers of proof from the parties or their counsel as to any or all such issues. Offers of proof shall take the form of a written statement or an oral statement on the record identifying each witness the party would call to testify concerning the issue and summarizing each witness’s testimony. If the Regional Director determines that the evidence described in an offer of proof is insufficient to sustain the proponent’s position, the evidence shall not be received.

29 C.F.R. § 102.66(c). While GC Memo 15-06 counsels regional directors and hearing officers to discuss which issues for which the “director would like the parties to provide an offer of proof” before a hearing, nothing in the GC Memo or the Regulations prohibits offers of proof after the Hearing has opened. In fact, GC Memo 15-06 contemplates the hearing officer demanding offers of proof after the opening of the hearing. GC Memo 15-06, at p. 11. Moreover, the Union requested that the Employer provide offers of proof while the parties were still discussing the Employers Statement of Position and before the Employer began its presentation.

The instant matter is exactly the type of dispute that compels the Region to require the Employer to provide offers of proof. To prevail, the Employer bears two heavy burdens. It must first show through more than conclusory statements that two nominally separate entities, MH Hospital Manager LLC and MH Community Multispecialty Providers, LLC, constitute a “single employer,” i.e., have “common ownership, common management, interrelations of operations, and common control of labor relations.” *Mercy General Health Partners Amicare Homecare*, 331 N.L.R.B. 783, 784 (2000) (citing *Radio Techs. Local 1264 v. Broadcast Serv. Of Mobile*, 380 U.S. 255, 256 (1965); *Denart Coal Co.*, 315 N.L.R.B. 850, 851 (1994)). Even if the Employer were somehow able to pass this very stringent test, the Employer would then have to show that MHCMP’s employees at the petitioned-for locations, as well as employees at several outlying clinics, have a community of interest shared so closely with the petitioned-for employees that their exclusion is arbitrary. *Bashas’, Inc.*, 337 N.L.R.B. 710, 711 (2002). To determine whether there is such a community of interest, the Board evaluates factors such as employees’ skills and duties, terms and conditions of employment, employee interchange, functional integration, geographic proximity, centralized control of management and supervision, and bargaining history. *See NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986); *Alamo Rent-A-Car*, 330 N.L.R.B. 897 (2000);

Requiring offers of proof as to how the Employer will meet these two tests promotes the purposes of the Act to ensure that registered nurses are able to vote in an expeditious manner on the question of union representation. The Employer is very unlikely to meet its two heavy burdens. We have now sat through one full day of hearing where the Employer has presented evidence and testimony. Its evidence and testimony was nothing more than vague, conclusory statements with effectively demonstrative exhibits that lack best evidence and reliability. At this

pace, the Employer is likely to drag the hearing out for weeks with tangential and unreliable evidence to further delay the nurses' exercise of their rights to organize a union. The nurses have waited over a month for this representation hearing. Further delay through the Employer's frivolous arguments frustrates the purposes of the Act, and the Regional Director should require the Employer to provide serious offers of proof and exclude evidence that is insufficient to sustain the Employer's position.

For the foregoing reasons, the Union respectfully requests that the Regional Director reconsider its denial of the Union's request and order the Employer to provide offers of proof as to the issues it raised to be litigated.

Dated: April 15, 2020

NATIONAL NURSES ORGANIZING  
COMMITTEE/ NATIONAL NURSES UNITED  
LEGAL DEPARTMENT

/s/ Anthony J. Tucci  
Nicole Daro  
David B. Willhoite  
Anthony J. Tucci  
Legal Counsel

## **PROOF OF SERVICE**

The undersigned hereby declares under penalty of perjury that I am a citizen of the United States, over the age of eighteen years and that my business address is 155 Grand Ave., Oakland, California 94612.

On the date below, I served the following document:

### **MOTION FOR RECONSIDERATION**

via Electronic Mail as follows:

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***Counsel for Employer***

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 15, 2020, at Oakland, California.

/s/ Anthony J. Tucci  
Anthony J. Tucci